

DECLARATION OF RESTRICTIONS
CHERRY CREEK SECTION THIRTEEN

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THE STATE OF TEXAS
COUNTY OF TRAVIS

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KNOW ALL MEN BY THESE PRESENTS

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This Declaration of Restrictions ("Declaration") is made this 10th day of June, 1994, by MILBURN INVESTMENTS, INC., a Texas corporation (hereinafter referred to as "Declarant").

WITNESSETH:

23.54-CHK

WHEREAS, Declarant is the sole owner of the property described as CHERRY CREEK SECTION THIRTEEN, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 92, Pages 236-238, Plat Records of Travis County, Texas, to which plat and its record reference is here made for all purposes (hereinafter called the "Subdivision"), and desires to encumber the property comprising the subdivision with the covenants, conditions, restrictions, reservations and charges hereinafter set forth, which shall inure to the benefit and pass with the property comprising the Subdivision, each and every parcel or resubdivision thereof, and shall apply to and bind all future owners of any portion thereof;

NOW THEREFORE, Declarant hereby declares that all of the property comprising the Subdivision shall be held, transferred, sold and conveyed subject to the following covenants, conditions, restrictions, reservations and charges, hereby specifying and agreeing that this Declaration and the provisions hereof shall be and do constitute covenants running with the land and shall be binding upon Declarant, its successors and assigns, and all subsequent owners of any portion of the Subdivision, and the owners, by acceptance of their deeds, for themselves, their heirs, executors and assigns, covenant and agree to abide by the terms and conditions of this Declaration.

I.

PROPERTY SUBJECT TO THE DECLARATION

The property which is and shall be held, transferred, sold and conveyed, subject to the covenants, conditions, restrictions, reservations and charges hereinafter set forth is described as follows:

CHERRY CREEK SECTION THIRTEEN, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 92, Pages 236-238, Plat Records of Travis County, Texas.

II.

COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND CHARGES

The Subdivision described in Section I hereof is encumbered by the covenants, conditions, restrictions, reservations and charges hereinafter set forth to insure the best and highest use and the most appropriate development and improvements of each lot for residential purposes within said Subdivision; to protect owners of lots against improper use of surrounding lots; to preserve so far as practicable, the natural beauty of said Subdivision; to guard against the erection of poorly designed or proportioned structures of improper or unsuitable materials; to encourage and secure the erection of attractive improvements on each lot with appropriate location; to prevent haphazard and inharmonious improvements of lots; to secure and maintain proper setbacks from streets and adequate free space; and, in general, to provide for development of the highest quality to enhance the value of investments made by owners.

A. Land Use and Building Types. The lots shall be used solely for private single family residential purposes. On each residential lot no building shall be erected, altered, placed or permitted other than a detached, single family dwelling not to exceed two (2) stories in height, with an attached private garage or carport for not more than three (3) cars. No building shall remain incomplete for more than one (1) year after construction has been commenced.

B. Antennae. No exterior radio or television antenna or aerial or satellite dish receiver shall be erected or maintained on any Lot. The foregoing notwithstanding, in the event the absolute prohibition of such antenna or receivers is invalidated or held to be unenforceable in any respect, then no exterior radio or television antenna, satellite dish or similar device shall be permitted to be erected or placed on any Lot unless the same is screened from view from adjoining Lots, streets and other portions of the Subdivision.

C. Architectural Control. No building, wall, fence or any other improvement shall be erected or placed on, nor shall any building, wall, fence or any other improvement be altered, modified, added to or removed from any lot until the construction plans and specifications thereof and a plan showing the location of all buildings, walls, fences and other improvements, including, but not limited to, driveways and setbacks, have been approved in

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writing by the Architectural Control Committee, hereinafter called "Committee". Nor shall the topography of the lot be enlarged in any way which will impede, restrict or in any way divert the flow of water without the prior written approval of the Committee. The approval of the Committee shall not be unreasonably or whimsically withheld.

The Committee shall be composed of three (3) members. The original members of the Committee shall be Bryan Rome, Steve Herring and Terry E. Mitchell. Each Committee member shall serve at the pleasure of the Declarant. In the event of the death, resignation or removal of any member of said Committee, the remaining member or members will have full authority to act until the member or members have been replaced. A decision of a majority of the Committee shall be binding on all members thereof.

The Committee in considering each set of plans and specifications and the plan showing the location of all improvements shall consider, among other things, the quality of design and materials, harmony of the design with existing structures and location with respect to topography and finished grade elevation.

The Committee's approval or disapproval of the plans and specifications and plot plan for the improvements to be erected or placed on a lot, or the plans and specifications for the alteration, modification, addition to or removal of any improvements located on a lot, shall be granted within thirty (30) days after the same have been submitted to the Committee; if the Committee's approval or disapproval is not so granted within such thirty (30) days, then in that event the same shall be deemed approved and this covenant complied with. All plans and specifications shall be delivered to the Committee not less than thirty (30) days prior to the date construction is to be commenced at its office at 11911 Burnet Road, Austin, Travis County, Texas 78758, or any such other address as it may designate, by certified mail, return receipt requested, or delivered and a written receipt received therefor, and the date received by the Committee shall be considered the date of delivery to the Committee.

Anything herein to the contrary notwithstanding, the Committee is hereby authorized, at its sole discretion, to waive any requirements relating to garages (including size), carports, dwelling size, masonry requirements, fences, and setbacks and such decision shall be binding on all owners of lots encumbered by this Declaration.

D. Dwelling Size. The ground floor area of the main structure of the single story, single-family residence shall be not less than One Thousand Four Hundred (1400) square feet, excluding all open and covered porches and garage units. If more than one (1) story, the combined area for the first and second floors shall be not less than One Thousand Six Hundred (1600) square feet. The Architectural Control Committee may approve a dwelling size containing less square feet, but such approval must be in writing.

E. Easements and Setbacks. Easements reserved and setback requirements are those set forth on the plat of record of the Subdivision on file in the Plat Records of the county in which the Subdivision is located, Texas, and other such easements dedicated by separate instrument on file in the Official Real Property Records of the County in which the property is located, Texas. Within these easements, no structure, planting or other material shall be placed, or permitted to remain, which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or drainage channels in the easements, or which may obstruct or retard the flow of water. The easement area of each lot shall not be fenced out of the lot and shall be maintained continuously by the owner of the lot.

F. Fences. No fence, wall or hedge shall be erected, placed or altered on a lot nearer to the front street than the front wall of the house situated on such lot.

G. Garbage and Refuse. No garbage or refuse of any kind shall be placed or permitted to accumulate on any property within the Subdivision, and no odor shall be permitted to arise therefrom so as to render any property within the Subdivision unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within a closed structure or structures or appropriately screened from view. Each lot owner shall contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity.

H. Hazardous Activities. No activities may be conducted on the Subdivision and no improvements constructed on the Subdivision which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Subdivision, and no open fires shall be lighted or permitted except within safe and well designed interior fireplaces, or in contained barbecue units which are attended and in use for cooking purposes only.

I. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any property within the Subdivision except that each lot owner may keep no more than two (2) dogs, two (2) cats, or two (2) other household pets, provided they are not kept, bred or maintained for any commercial purpose. No animal shall be allowed to make an unreasonable amount of noise or to become a nuisance, and no domestic pets will be allowed on any property within the Subdivision other than on the lot of its owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration within the Subdivision, and no kennels or breeding operation shall be allowed. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and wastes at all times. Such enclosed area shall be constructed in accordance with plans approved by the Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Subdivision.

J. Maintenance, Alteration or Removal of Improvements. All improvements upon any of the Subdivision shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof. The opinion of the Committee as to condition and repair shall be final. Any construction, other than normal maintenance, which in any way alters the exterior appearance of any improvements, or the removal of any improvements within the Subdivision shall be performed only with the prior written approval of the Committee.

K. Masonry. Each dwelling shall have not less than twenty five percent (25%) of the exterior walls of masonry construction; provided, however, the Committee may waive this requirement in whole or in part, but any such waiver must be in writing.

L. Noise. No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any of the Subdivision. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Subdivision so as to be offensive or detrimental to any other portion of the Subdivision or to its occupants.

M. Nuisances. No noxious or offensive activity shall be conducted within the Subdivision, nor shall anything be done thereon which may be or become an annoyance to the neighborhood, or which is in conflict with the purposes of these restrictions.

N. Oil and Mining Operations. No portion of the Subdivision shall be used for the purpose of oil drilling, oil development, operations, oil refining, coring, boring or exploring for or removal, removing oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth.

O. Signs. No signs of any kind shall be displayed for public view on any property within the Subdivision, except for the following: One (1) sign of not more than five (5) square feet, advertising any property within the Subdivision for sale or rent; signs used by builders to advertise property within the Subdivision for sale; and directional and marketing signs of not more than four (4) feet by eight (8) feet used by the developer and builders for marketing purposes. All merchandising, advertising and sales programming shall be subject to the approval of the Committee.

P. Subdividing. No Lot shall be further divided or subdivided, nor may any easement or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Committee; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the Committee.

Q. Temporary Structures. No mobile home, basement, garage, temporary structure, trailer, derelict, junk or racing motor vehicle, or any motor vehicle without a current license tag, nor any tent, shack, barn or other outbuilding, or other improvement or structure of any kind, other than one (1) outbuilding, not to exceed eight (8) feet in height, eight (8) feet in width, and ten (10) feet in length, shall be erected, placed, or permitted to remain on any Lot at any time, either temporarily or permanently. The foregoing notwithstanding, the Declarant shall have the right to utilize temporary structures for a sales office or construction office during the period while actually engaged in construction or sales activity within the Subdivision.

R. Unightly Articles; Vehicles. No article or personal property of any nature deemed to be unsightly by the Committee shall be permitted to remain on any property within the Subdivision so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, mobile homes, recreational vehicles, wagons, buses, motorcycles, motor scooters and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view, and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages. Lot owners shall not keep more than two (2) automobiles in such manner as to be visible from any other property within the Subdivision for any period in excess of seventy-two (72) hours. No automobile, boat, trailer, truck, tractor, camper, mobile home, recreational vehicle, motor scooter, maintenance equipment or other vehicle may be parked overnight on any roadway within the Subdivision. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse of trash shall be kept, stored or allowed to accumulate on any portion of the property except within enclosed structures which are appropriately screened from view. No (i) racing vehicles, or (ii) other vehicles (including without limitation motorcycles and motor scooters) which are inoperable or do not have a current license tag shall be permitted to remain visible on any lot or to be parked on any street in the Subdivision. No commercial vehicles larger than a standard size pickup truck or van shall be permitted to remain on any lot or to be parked on any street in the Subdivision.

S. Landscaping. The front yards of all Lots, from the front property line to the front wall of the house, shall be fully sodded with St. Augustine, Bermuda, Prairie Buffalo Grass or other sod approved by the Architectural Control Committee.

III.

SIDEWALKS

The owner of each lot shall construct, at his cost and expense and prior to his occupancy of the dwelling, sidewalks, if any, as set forth on the recorded subdivision plat. This provision may not be amended or altered in any way without the prior written approval of the applicable governmental entity having jurisdiction over the Subdivision.

IV.

TERM

These covenants run with the land and shall be binding on all persons claiming under them until January 1, 2019 ("initial term"), at which time said covenants shall be automatically extended for successive periods of ten (10) years each ("renewal term") unless, by vote of a majority of the then-owners of the lots encumbered by this Declaration, it is agreed to change said Declaration in whole or in part.

Any such instrument of amendment or termination must be executed and acknowledged by fifty-one percent (51%) of the then-owners of the lots encumbered by this Declaration and filed of record in the Official Real Property Records of county(s) in which the Subdivision is located, Texas. The instrument of amendment shall be effective to amend this Declaration when such instrument is filed of record. The instrument of termination shall be effective to terminate this Declaration at the expiration of the initial term, if such instrument is filed of record during the initial term hereof; or if such instrument is filed of record during any renewal term, this Declaration shall be terminated at the end of such renewal term. Notwithstanding anything contained herein to the contrary, Declarant, its successors or assigns, may amend these covenants at any time, or from time to time, in order to correct any typographical errors or other errors or omissions which, in the discretion of the developer, its successors or assigns, may require amendment in order to properly reflect the intent hereof. Such amendments to correct typographical errors or other errors or omissions shall be effective on the date that such amendment is filed of record in the Official Real Property Records of the county(s) in which the Subdivision is located, Texas by the Declarant, its successors or assigns. Notwithstanding anything hereinabove, no amendment shall be effective until the approval of any governmental regulatory body which is required shall have been obtained.

V.

EXTERIOR MAINTENANCE

In the event the owner of any lot shall fail to maintain the premises and the improvements situated thereon in a neat and orderly manner, the Committee shall have the right, through its agents and employees, to enter upon said lot and to repair, maintain and restore the lot and exteriors of the buildings and any other improvements erected thereon, all at the expense of the owner.

VI.

ENFORCEMENT

If the owner of any lot, or his heirs, executors, administrators, successors, assigns or tenants shall violate or attempt to violate any of the covenants set forth in this Declaration, it shall be lawful for any person, or persons, owning any lot encumbered by this Declaration, or Declarant, to prosecute any proceedings against the person, or persons, violating, or attempting to violate, any such covenants. The failure of the owner or tenant to perform his obligations hereunder would result in irreparable damage to the Declarant and other owners of lots in the Subdivision, thus the breach of any provisions of this Declaration may not only give rise to an action for damages at law, but also may be enjoined by an action for specific performance in equity in any court of competent jurisdiction. Such action may be brought against any person, firm or corporation violating, or apparently about to violate, any of these covenants, either before such violation occurs or within a reasonable time thereafter, for an appropriate order or injunction of either a restraining or mandatory nature, or both, and of either a temporary or permanent nature, or both, including, but not limited to, one restraining construction of any improvements commenced, or about to be commenced, without the prior written approval of the Committee or for the removal of any improvement constructed without the prior written approval of the Committee. In the event enforcement actions are instituted and the party bringing such action is successful in obtaining any relief, then in addition to the remedies specified above, the party or parties against whom such relief was granted shall pay to the enforcing party costs and reasonable attorney's fees in such amount as the court may determine. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

VII.

SEVERANCE

In the event any of the foregoing covenants, conditions, restrictions, reservations or charges is held invalid or unenforceable by a court of competent jurisdiction, it shall not affect the validity and enforceability of the other covenants, conditions, restrictions, reservations or charges. If one of the foregoing is subject to more than one interpretation, the interpretation which more clearly reflects the intent hereof shall be enforced.

VIII.

NUMBER AND GENDER

The singular shall be treated as the plural and vice versa, if such treatment is necessary to interpret this Declaration. Likewise, if either the feminine, masculine or neuter gender should be any of the other genders, it shall be so treated.

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Restrictions effective as of the date first set forth above.

MILBURN INVESTMENTS, INC.

By: Jerry E. Mitchell
Jerry E. Mitchell
Vice President

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 16th day of June, 1994, by Terry E. Mitchell, Vice President, Vice President of Milburn Investments, Inc., a Texas corporation, on behalf of said corporation.



Sharon L. Stephens
Notary Public, State of Texas

AFTER RECORDING RETURN
Milburn Investments, Inc.
Legal Dept.
18014 Burnet Road
Austin, Texas 78758

David F. Co.
John Jacki Manuel

FILED
Jun 16 3 11 PM '94
DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on
the date and at the time stamped herein by me, and
was duly RECORDED, in the Volume and Page of the
General RECORDS of Travis County, Texas, on

JUN 16 1994

Dana Debeauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

RECORDS.DISTRICT.CO

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12209 0541

AMENDMENT TO DECLARATION OF RESTRICTIONS
CHERRY CREEK SECTION THIRTEEN

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

This Amendment to the Declaration of Restrictions Cherry Creek Section Thirteen (the "Amendment") is made by MILBURN INVESTMENTS, INC., a Texas corporation (the "Declarant") and is as follows:

RECITALS:

A. Declarant executed and filed for record that certain Declaration of Restrictions Cherry Creek Section Thirteen dated to be effective June 16, 1994, recorded in Volume 12209, Page 537, Real Property Records of Travis County, Texas (the "Declaration"), which encumbers certain real property (the "Property") therein described.

B. Pursuant to Article IV of the Declaration, the Declarant may amend the Declaration at any time, or from time to time, in order to correct any errors or omissions which Declarant may require in order to properly reflect the Declaration's intent.

C. Declarant has agreed to convey to Southland Oaks Municipal Utility District Lot 23, Block B, in Cherry Creek Section Thirteen, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 92, Pages 236-238, Plat Records of Travis County, Texas.

NOW, THEREFORE, the Declarant hereby makes the following amendments and modifications to the Declaration:

1. Article II.A. of the Declaration shall be deleted in its entirety and following shall be substituted in its place:

A. Land Use and Building Types. The lots, with the exception of Lot 23, Block B, shall be used solely for private single family residential purposes. On each residential lot no building shall be erected, altered, placed or permitted other than a detached, single family dwelling not to exceed two (2) stories in height, with an attached private garage or carport for not more than three (3) cars. No building shall remain incomplete for more than one (1) year after construction has been commenced. Lot 23, Block B, shall be used as a park for the benefit of the residents of the Southland Oaks Municipal Utility District, their successors and assigns.

2. Unless expressly amended by this Amendment, all other terms and provisions of the Declaration shall remain in full force and effect.

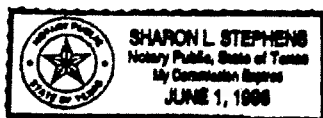
Executed on this 18TH day of April, 1995.

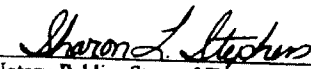
MILBURN INVESTMENTS, INC.

By: 
Terry E. Mitchell
Vice President

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 18TH day of April, 1995, by Terry E. Mitchell, Vice President of MILBURN INVESTMENTS, INC., a Texas corporation, on behalf of said corporation.




Notary Public, State of Texas
Notary's printed name: Sharon L. Stephens

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS
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DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

After Recording, Please Return To:
Rolain Pigott
Strasburger & Price, L.L.P.
2600 One American Center
600 Congress Avenue
Austin, Texas 78701-3288

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12503 0020

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on
the date and at the time stamped herein by me, and
was duly RECORDED, in the Volume and Page of the
PUBLIC RECORDS of Travis County, Texas, on

AUG 17 1995



Dana Debeauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

RECORDING FEE: \$11.00
TRAVIS COUNTY, TEXAS
FILE DATE: 8/17/95 TIME DATE: 11:22 AM
TRAVIS COUNTY, TEXAS